

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SHIRLEY T BURTON, on behalf of plaintiff
and the class defined herein,

Plaintiff,

v.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ MAR 15 2013 ★

CV 13 BROOKLYN DEFECTIVE
01426

COMPLAINT – CLASS ACTION

NATIONS RECOVERY CENTER, INC.;
ATLANTIC CREDIT & FINANCE SPECIAL
FINANCE UNIT III, LLC

Defendants. :

x

INTRODUCTION

1. Plaintiff, Shirley T Burton (“Plaintiff”), brings this action to secure redress against unlawful collection practices. The defendants are collection agency Nations Recovery Center, Inc. (“Nations Recovery”) and debt collector Atlantic Credit & Finance Special Finance Unit III, LLC (“Atlantic Credit”). Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”).

2. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt; it also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

JURISDICTION AND VENUE

3. This Court has jurisdiction under §1692k (FDCPA).

4. Venue in this District is proper because defendants’ collection communications were received in this District.

PARTIES

5. Plaintiff resides in the Eastern District of New York.
6. Defendant Atlantic Credit is a Virginia foreign limited liability company with a service address of c/o Corporation Service Company at 80 State Street in Albany, NY 12207.
7. As of March 12th, 2013, Defendant Atlantic Credit is licensed by New York City as a debt collection agency with an address of 2727 Franklin Rd SW in Roanoke, VA.
8. Defendant Atlantic Credit frequently sues to collect debts using the debt collection law firm specialist Forster & Garbus.
9. According to a search of the online records for New York cases, Atlantic Credit was creditor in over 50 cases <http://iapps.courts.state.ny.us/webcivilLocal/LCSearch?param=P>.
10. Defendant Nations Recovery is a Georgia corporation with a service address of 6491 Peachtree Industrial Blvd. in Atlanta, Georgia.
11. Defendant Nations Recovery uses the mails and telephones in conducting its business.
12. Defendant Nations Recovery is licensed by New York City as a debt collection agency as of March 12th, 2013.
13. The Defendants acted together in carrying out the illegal conduct complained of below.

FACTS RELATING TO PLAINTIFF

14. Shortly after January 31st, 2013, plaintiff received in the mail the document attached as Exhibit A.
15. Exhibit A seeks to collect an alleged debt incurred for personal, family or household purposes and not for business purposes.
16. On information and belief, Exhibit A was the first document plaintiff received from Nations Recovery.

17. On information and belief, Exhibit A is a form document.
18. Exhibit A does not state the “current creditor”.
19. Instead in two separate places the letter states:

Atlantic Credit & Finance Unit III, LLC
RE: CAPITAL ONE, NA ASSIGNEE FROM HSBC

20. The least sophisticated consumer is unable to determine from this letter the name of the current creditor especially since a consumer is only likely to recognize Capital One or HSBC as being the creditor. Therefore, when the letter says “The above creditor has placed your account....”, a consumer is going to believe that the creditor is Capital One, NA which is an assignee from HSBC. To the least sophisticated consumer the words “Atlantic Credit & Finance Special Finance Unit III, LLC” means absolutely nothing without any explanation as to that entity’s relationship with this account is. *Eun Joo Lee v. Forster & Garbus LLP*, 2013 U.S. Dist. LEXIS 28534, 12-cv-420-EDNY (DLI) (CLP) (March 1st, 2013).

21. Exhibit A did not contain the notices required by 15 U.S.C. §1692g(a)(2).

COUNT I – FDCPA

22. Plaintiff incorporates all of the above paragraphs as though fully stated herein.

23. Defendants violated 15 U.S.C. §1692g, by failing to provide the notice required by 15 U.S.C. §1692g(a)(2).

24. Section 1692g provides:

§ 1692g. Validation of debts

(a) Notice of debt; contents. Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts. If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this title may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication

during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability. The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings. A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions. The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.], title V of Gramm-Leach-Bliley Act [15 USCS §§ 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

25. Defendants are liable to the plaintiff for statutory damages pursuant to §1692k.

CLASS ALLEGATIONS

26. Plaintiff brings this action on behalf of a class, pursuant to Fed. R.Civ.P. 23(a) and (b)(3).

27. The class consists of (a) all natural persons with New York addresses (b) who were sent a document in the form represented by Exhibit A (c) with the words "Atlantic Credit & Finance Special Finance Unit III, LLC" above the words "RE: CAPITAL ONE, N.A. ASSIGNEE FROM HSBC (d) on or after a date one year prior to the filing of this action, and (e) on or before a date 20 days after the filing of this action.

28. The class members are so numerous that joinder is impracticable.

28. On information and belief, there are more than 50 natural persons with New York addresses who were sent a document in the form represented by Exhibit A on or after a date one year prior to the filing of this action, and on or before a date 20 days after the filing of this action.

29. Exhibit A has bar-coded addresses and return addresses, which entitle the mailer to discounts from the Postal Service associated with large-scale mailings.

30. There are questions of law and fact common to the class members, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether Exhibit A violates the FDCPA.

31. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

32. Plaintiff will fairly and adequately represent the interests of the class members. Plaintiff has retained counsel experienced in consumer credit and debt collection abuse cases.

33. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible. Many debtors may not realize that their rights are violated.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class members and against defendants for:

- (1) Statutory damages;
- (2) Attorney's fees, litigation expenses and costs of suit;
- (3) Such other or further relief as the Court deems proper.

Dated 3-13-13


Shimshon Wexler
THE LAW OFFICES OF SHIMSHON WEXLER, P.C.
PO Box 250870
New York, New York 10025
(212) 760-2400
(917) 512-6132 (FAX)
shimshonwexler@yahoo.com

NOTICE OF ASSIGNMENT

Please be advised that all rights relating to attorney's fees have been assigned to counsel.



~~Shirley T Burton
Albion, NY 14411-2315~~**Nations Recovery Center, Inc.**

6491 Peachtree Industrial Blvd.
Atlanta, GA 30360
(770) 234-0101
(800) 935-1139

January 31, 2013

Atlantic Credit & Finance Special Finance Unit III, LLC
RE: CAPITAL ONE, N.A. ASSIGNEE FROM HSBC
Balance: \$842.42
Account #: 0000048102983268

NRC/0000048102983268 439110111104 276028457873 615/000615/0004

Shirley T Burton
11929 234th St
Cambria Hts, NY 11411-2315

Nations Recovery Center, Inc.
PO Box 620130
Atlanta, GA 30362-2130

*** Please detach and return in the enclosed envelope with your payment ***

11104

Atlantic Credit & Finance Special Finance Unit III, LLC
RE: CAPITAL ONE, N.A. ASSIGNEE FROM HSBC
Balance: \$842.42
Account #: 0000048102983268

Dear Shirley T Burton:

The above creditor has placed your account with our company for collection. We realize it may have been an oversight on your part and not an intentional disregard of an obligation.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

Please make full payment or arrangements with this office. If you cannot pay the balance, contact our office. I am sure we can work out an acceptable arrangement.

This is an attempt to collect a debt and any information obtained will be used for that purpose. This is a communication from a debt collector.

You can pay 24/7 at www.PayNRC.com.

Sincerely,

Brian Wilson
Account Manager

Nations Recovery Center, Inc.
6491 Peachtree Industrial Blvd.
Atlanta, GA 30360
(770) 234-0101

New York City Department of Consumer Affairs License Number 1093260.

EXHIBIT A